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7RT UNIT 3785 Examiner T. Matal

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex Parte: Grace Spears

Serial No.: 10/724,565

Filed: 12/01/2003

APPLICANT'S BRIEF ON APPEAL

PURSUANT TO 37 C.F.R. 1.91

Being Filed Concurrently with Applicant's Notice of Appeal

Real Party in Interest

The real party in interest is the Applicant, Grace Spears.

Related Appeals and Interferences

There are no other appeals or interferences known to Applicant, or her legal representative, or assignee which will directly affect or be directed affected by or have a bearing on the Board's decision in the pending appeal.

Status of Claims

Presently pending, and the subject of the present appeal are claims 1 to 3, inclusive. Claim 4 has been canceled.

Status of Amendments

No amendments to the claims have been made subsequent to the final rejection.

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that this reference discloses a collar protector (10) formed of a disposable planar material, col. 2, lines 9-11, that has an outer collar member (24) with configuration corresponding to a garment collar (18) which is longitudinally foldable to overlie the garment collar as shown in Figure 4. Examiner states that an underlying member (22) is formed integrally with the collar member at a segment of an edge thereof extending downwardly beneath an inner surface (16) of a garment, col. 2, lines 18-25, and as shown in Figure 2. Examiner states that the collar protector has an inner surface thereof with an adhesive coating (28) to maintain the protector onto the garment collar, col. 2, lines 34-47.

Examiner's rejection is essentially a repetition of his initial rejection presented in his first office action. It appears to Applicant the Examiner does not understand the scope of Gaines' disclosure, nor does he apparently appreciate Applicant's contribution to the art. Figure 2 of Gaines illustrates a shirt collar 18 which includes an inner flap 16 which normally contacts the neck of the wearer, and an outer flap 18 which will partially overlie a necktie, if the same is worn. Gaines also discloses his own protective device, which in installed condition is substantially congruent with and adhesively attached to each of the inner and outer flaps of the collar. No part of his device extends below the lower edge of the inner band of the collar, or below the outer edge of the outer flap of the collar. It is true that Gaines' device is adapted to protect the collar of the garment against soil, and possibly absorb perspiration from the face and neck of the user. What Gaines does not contemplate is the provision for absorbing perspiration from the surface of the back of the user which is normally

covered by the garment, i.e. a shirt, which skin surface is covered by the back panel of the shirt or other garment, and is not vented to the ambient air. Applicant's contribution to the art is the provision of a portion of her protective collar which extends below the lower edge of the inner flap of the garment collar so as to be in a position to absorb perspiration from the upper back skinned surface of the user, which under very warm conditions, can be quite pervasive, and is not otherwise vaporized because of lack of exposure to the ambient air. This prevents the back panel of the garment from being soiled, while the rest of Applicant's device performs a function substantially similar to that of Gaines. This improvement is specifically set forth in the last four lines of claim 1, as set forth in the appendix.

Claim 3 is submitted as allowable as depending from claim 1, for the reasons set forth above, and includes a further limitation to the effect that the collar and the underlying member are formed integrally.

The portions referred to in the text of Gaines have been reviewed by Applicant, but are not believed to be inconsistent with the disclosure of Figure 2 of Gaines, which does not either disclose or suggest Applicant's invention.

Rejection under 35 U.S.C. 103.

Examiner has rejected claim 2, under 35 U.S.C. 103 as unpatentable over Gaines. He states that with regard to claim (Sic.) 3, it would have been obvious that the collar protector of Gaines can be made of any desired material that was available at the time the device was made. It is believed that Examiner had reference to claim 2.

While admittedly, devices of this type can be made of any suitable material, some suitable materials are better suited than others for the presently contemplated purpose. A non-woven material is not only cheaper, but better adapted to absorb moisture and perspiration than a woven one, although it may be made of synthetic materials.

Conclusion

As is often the case, it appears to Applicant that Examiner's conclusion is based upon hindsight with reference to Applicant's disclosure, rather than any showing or suggestion in the single reference upon which he relies. It is sometimes said that invention consists of two parts, including that which relates to the appreciation of the general result wished for, and a second part which provides the actual means or structure by which the result is obtained. In many cases, once the first portion of the invention is appreciated, the reduction to practice may be, indeed, very simple. It is submitted that such is the case in the instant application. The general result wished for is the provision of means for preventing perspiration from reaching the outer back panel of the garment, particularly in that area disposed below the rear portion of the neck of the user. In some cases, where the garment is worn with underwear, the underwear will absorb at least some of this perspiration. Where a garment is worn without underwear, in very warm surroundings, the need for Applicant's invention will be readily appreciated. It is submitted that Applicant's claims 1 to 3 adequately present

Applicant's contribution to the art. It is submitted that the holding of the Examiner in rejecting claims 1 and 3 under Section 102, and claim 2 under Section 103, be reversed.

Respectfully submitted,



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March 22, 2005

Appendix
The claims on Appeal

1. A collar protector for preventing the accumulation of soil on the surfaces of a garment collar during wearing thereof, said protector being formed of disposable planar material comprising: an outer collar member having a configuration corresponding to that of said garment collar, and longitudinally-foldable to overlie said garment collar when said garment is worn; and an underlying member, interconnected to said collar member at a segment of an edge thereof to extend downwardly beneath an inner surface of a garment attached to said garment collar.
- 5 10 2. A collar protector in accordance with claim 1, made of non-woven fibrous materials.
3. A garment protector in accordance with claim 1, in which said collar member and said underlying member are formed integrally.